

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA :
vs. : CRIMINAL ACTION NO. 08-0077-KD-B
CHRISTOPHER FOUNTAIN :

REPORT AND RECOMMENDATION

This matter is before the Court on Defendant Christopher Fountain's Second Motion for Leave to Appeal In Forma Pauperis (Doc. 52). Defendant's motion was referred to the undersigned by the Clerk of Court pursuant to 28 U.S.C. § 636(b)(3)¹. The undersigned previously issued a Report and Recommendation (Doc. 50), which recommended the denial of Petitioner's first Motion for Leave to Appeal In Forma Pauperis (Doc. 43) because Defendant failed to comply with the Court's Order dated November 4, 2008 (Doc. 49). In the November 4th Order, Defendant was directed to file an amended motion in compliance with Fed. R. App. P. 24(a) by November 18, 2008. Defendant neglected to timely respond to the Court's November 4th Order; thus, the undersigned recommended that

¹ This recommendation is made following a referral pursuant to 28 U.S.C. § 636(b)(3); as a result, Defendant is not afforded ten days in which to file objections. Minetti v. Port of Seattle, 152 F. 3d 1113, 1114(9th Cir. 1998) ("Section 636(b)(3) does not provide a party with ten days to file written objections with the district court."). Accordingly, the Clerk of Court is DIRECTED to refer this matter to the District Judge for her consideration without the necessity of a waiting period.

his motion be dismissed as he failed to comply with the Court's November 4th Order, and he failed to provide the Court with the information necessary to evaluate his financial situation.

Although Defendant was advised that his initial motion was deficient in that it did not include the information required by Form 4 of the Appendix of Forms, which are attached to the Federal Rules of Appellate Procedure, Defendant has not corrected the deficiencies. Defendant has not provided any information regarding all payments he has made to his attorneys in connection with this case, nor has he provided a statement, certified by an authorized prison official, regarding all receipts, expenditures and balances in Defendant's prison account, during the last six months. Accordingly, in light of Defendant's continued failure to file a motion in compliance with Rule 4 of the Federal Rules of Appellate Procedure, and Form 4 of the Appendix of Forms, the undersigned RECOMMENDS that the District Judge deny Defendant's second Motion for Leave to Appeal In Forma Pauperis (Doc. 52).

DONE this **12th** day of **December**, **2008**.

 /S/ SONJA F. BIVINS
UNITED STATES MAGISTRATE JUDGE